(2)

CF0000060421

CA 154/97

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

APPEAL OF PRISONER Division Bench (Criminal)

No. 4892 Name गिरधारी लाल उर्फ गिरधारी

Father's name नाथू गोंड

Residence मु0-कोनसा पटेलपारा, जि0-राजनांदगांव ..... 32, वर्ष .....

Sentenced to आजीवन, जुर्माना 1000या 3 माह On 12/12/96

Under section 302, भा0द0वि0 by मान0द्वितीय अति0 सत्र न्यायाधीश राजनांदगांव, म0प्र0

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent .....

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 4892 Name गिरधारीलाल उर्फ गिरधारी आ0 नाथू गोंड

Confined in केन्द्रीय जेल Jail रायपुर, म0प्र0

No. 14/2000 Dated 19/1/1997

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ अति0मुख्य महो0मा0 उच्च न्या0 म0प्र0 जबलपुर together which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्नः- सत्रप्रकरण क्रमांक-132/95
की प्रमाणित निर्णय प्रतिलिपि ॥

अधीक्षक,
केन्द्रीय जेल रायपुर (म. प्र.)
Superintendent
..... Jail .....

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199.....

Forwarded to the .....

.....

Date of receipt in Appellate Court .....

High Court of Madhya Pradesh
JABALPUR
20 JAN 1997
Reg. No. 72
Receipt Clerk
Jabalpur

(P. T. O.)

(12)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CRA NO 154 सन् 97 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ.

8-3-2006

Ms. Usha Chandrakar, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Ravindra Agrawal, Panel Lawyer for the State/respondent.

Oral judgment dictated on Dais.

PER L.C. BHADOO, J.

The accused/appellant has preferred this appeal under Section 374 (2) of the Cr.P.C. questioning the legality and correctness of the judgment of conviction and order of sentence dated 13th December 1996 passed by the 2nd Additional Sessions Judge, Rajnandgaon in S.T.No.132/95 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 3 months.

The case of the prosecution is that PW-1 Preetdas @ Preetram lodged the F.I.R. in Police Station Ambagarh Chowky to the effect that he is the resident of village Sonsai Tola and he is the Kotwar of that village. When he was working with his brother Komal, Uttra Bai, daughter of accused Girdhari came and informed that her father has set on fire Sonwati. Then he left the work and went along with Panch Gond and

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

others. Sarpanch Baisakhu Ram also came and he informed him about the whole case that Girdhari has set on fire Sonwati in front of his house. This has been disclosed by Uttra Bai, daughter of the accused, on which they went in front of the house of Girdhari and saw that Sonwati was lying in burnt condition. Girdhari has murdered Sonwati by setting her on fire.

Receiving this report the Station House Officer registered the Crime No.128/94 under Section 302 of the I.P.C., left for the scene of occurrence, after giving notice Ex.-P/1 to the Panchas, prepared Panchanama Ex.-P/2 of the dead body of the deceased. The body of Sonwati was sent for the postmortem examination to the Primary Health Centre, Ambagarh under Ex.-P/4-A where Dr. V.B. Dhok (PW-8) conducted the postmortem on the dead body of the deceased and prepared the postmortem report Ex.-P/4. He took into possession 2 Jars containing viscera of Sonwati. One sealed packet containing Sari and blouse of Sonwati was taken into possession under Ex.-P/7. The site plan (Ex.-P/11) of the place of occurrence was prepared. Merg intimation Ex.-P/10 was recorded. Based on the memorandum (Ex.-P/12) of the accused one tin of kerosene, one matchbox and one stone weighing 13½ kg were taken into possession under Ex.-P/13. Blood stained soil and plain soil was taken into possession under Ex.-P/14. The burnt pieces of sari of Sonwati were taken into possession from the place of occurrence under Ex.-P/15.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Ambagarh who in turn committed

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the case to the Sessions Judge, Rajnandgaon from where learned 2nd Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 17 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the argument of respective counsel convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties.

The homicidal death of deceased Sonwati is not in dispute.

As far as involvement of the accused/appellant in crime in question is concerned, PW-1 Preetdas, village Kotwar, who lodged the report has turned hostile and he has not supported the First Information Report lodged by him. Other material witness namely PW-5 Sukhbati in whose house Sonwati is said to have gone to seek shelter, but she has stated that on the fateful day she was sitting in front of her house along with her children. Sonwati came and said "save save", thereafter, the child started weeping, therefore, she went inside the house and she did not see anything. This witness has also been declared hostile. In the cross-examination, the prosecution has not been able to bring on record any circumstance which goes to show that accused Girdhari chased Sonwati, he dragged her and thereafter set her on fire.

XI-HC-22

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Another witness, Visheshar Sahu (PW-6) has stated that on the fateful day accused Girdhari was chasing Sonwati having stone in his hand and Sonwati raised the scream "save save" in front of the house of Sukhbati, on which Sukhbati said that do not quarrel in her house. Thereafter, he came to his house and half an hour thereafter, he saw that Sonwati was lying in burnt condition. Sonwati reached the house of Sukhbati and who dragged Sonwati, he did not see. Thereafter, he saw that near the Varandah Sonwati was lying in burnt condition, but he did not see Girdhari there. He has stated that Sonwati went towards the house of Sukhbati and Sukhbati, as mentioned earlier, has not supported the prosecution case and has not stated that Girdhari was chasing Sonwati. The prosecution has not been able to connect the accused/appellant with setting Sonwati on fire and committing murder of Sonwati by the evidence of PW-7 Poorandas who has stated that Girdhari, while beating, took Sonwati towards the house of Sukhbati . Girdhari attacked Sonwati with a stone on which Sonwati raised the cries that Girdhari is attacking her, therefore, save her but accused Girdhari continued to attack her. Thereafter, on account of fear they ran away towards the house. People saw Sonwati in burnt condition. Sonwati was seen going towards the house of Sukhbati and Sonwati was lying in burnt condition in front of the house on the street. Even this witness has not stated that he saw the accused setting Sonwati on fire. Moreover, as has been mentioned earlier, Sukhbati has not supported the case of the prosecution. PW-9 Kamla Bai has also turned hostile and she has stated that she does not know when Sonwati

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

died. The body of Sonwati was lying on the road. How she died, she does not know. Number of villagers were standing on the street and she did not see that Girdhari was chasing Sonwati. PW-12 Bharat has also turned hostile and he has stated that how Sonwati died, he does not know.

Virtually there is no legal and clinching evidence to connect the accused/appellant with the murder of the deceased. In the circumstances, we are of the considered opinion that since there is no legal and clinching evidence connecting the accused with the murder of the deceased, therefore, finding of the trial Court convicting the accused/appellant for commission of offence under Section 302 IPC cannot be sustained.

In the result, the appeal succeeds and same is allowed. The conviction and sentence imposed on the accused/appellant under Section 302 of the IPC are set aside. He is acquitted of the said charge. The accused/appellant be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Barve

[पीछे देखिये